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<i>Emily B. Caudill</i> REGULATIONS COMPILER

**STATEMENT OF EMERGENCY**  
**803 KAR 25:250E**  
**Mediation of Medical Disputes**


(1) In the fiscal year ending 2005, the Office of Workers' Claims experienced a dramatic increase in the number of medical disputes. The total amount of disputes has risen from 1,072 for fiscal year ending 2004 to 1,542 in 2005. Medical disputes are heard by one administrative law judge on the Frankfort motion docket, who has the discretion to summarily resolve them on the pleadings, or reopen the claims and assign them to administrative law judges for formal litigation. Many unrepresented claimants are being forced into litigation to get medical procedures or treatment paid by carriers. The amount of medical disputes has risen at such a fast and alarming rate that there is an imminent threat to the public health and welfare of injured workers. Our agency must take immediate action to expedite the medical disputes. A mediation program would resolve many medical disputes in a more efficient manner without the necessity of litigation. The program would control costs to the carrier and injured workers by resolving misunderstandings and miscommunications and bringing parties to an agreement.

(2) The emergency administrative regulation would provide immediate relief to a rapidly increasing problem. The number of medical disputes has grown by over 500 in one year and cannot wait the four (4) month period to start a mediation program. Action needs to be taken immediately to avoid a delay in any medical procedure or treatment needed by claimant.

(3) This emergency administrative regulation will be replaced by an ordinary administrative regulation and is identical to the ordinary administration regulation.

  
ERNIE FLETCHER, GOVERNOR

10/5/2005  
DATE

  
WILLIAM P. EMRICK  
EXECUTIVE DIRECTOR  
OFFICE OF WORKERS' CLAIMS

9-30-05  
DATE

1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 DEPARTMENT OF LABOR

3 OFFICE OF WORKERS' CLAIMS

4 (New Emergency Administrative Regulation)

5 803 KAR 25:250E. Mediation of Medical Disputes.

6 RELATES TO: KRS 342.276, 342.735

7 STATUTORY AUTHORITY: KRS 342.276(2), 342.735(1)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.276 enables

9 the executive director to establish a program for mediation and prescribe

10 administrative regulations for a mediation program. KRS 342.735(1) requires the

11 executive director to promulgate administrative regulations to expedite the

12 payment of medical benefits. This administrative regulation establishes a

13 mediation program for post settlement or post award claims to help expedite

14 medical disputes.

15 Section 1. (1) Upon the filing of a Form 112, all medical disputes shall be

16 designated for mandatory mediation if:

17 (a) the dispute involves workers' compensation claims which were

18 previously resolved by settlement or order of an administrative law judge, and

19 (b) if the claim is not currently assigned to an administrative law judge for

20 adjudication.

21 (2) The mediation shall be conducted by an administrative law judge

22 appointed pursuant to KRS 342.213.

1           Section 2. Duties of Mediator. The mediator shall:

- 2           (1) identify the pertinent, disputed issues that exist between the parties;  
3           (2) attempt to mediate an agreed resolution on disputed issues;  
4           (3) make recommendations to the parties;  
5           (4) draft an agreed order listing resolved and unresolved issues; and  
6           (5) keep all statements made by parties or parties' representatives in the  
7 mediation confidential with the exception of information entered into the agreed  
8 order.

9           Section 3. Procedures. (1) Within thirty (30) days of the filing of Form  
10 112, notice shall be sent to all parties assigning the medical dispute for  
11 mediation.

12           (2) Within thirty (30) days of the notice, the mediation shall be held.

13           (3) Parties or their representatives shall appear at the mediation  
14 conference prepared to mediate and attempt to resolve the medical dispute.

15           (4) Parties shall bring copies of the following:

- 16           (a) unpaid medical bills;  
17           (b) treatment notes to support all unpaid or disputed bills;  
18           (c) medical reports;  
19           (d) utilization review reports; and  
20           (e) all other pertinent documentation concerning the medical dispute at  
21 issue.

22           (5) At the conclusion of the mediation, the mediator shall complete the  
23 Form MAO which shall include the following:

- 24           (a) type of challenged or unpaid procedure;

1 (b) basis for challenge;

2 (c) resolved issues; and

3 (d) unresolved issues.

4 (6) The Form MAO shall be completed and signed by the mediator and all  
5 parties present at the mediation.

6 (7) All issues agreed upon by the parties listed in Form MAO shall be  
7 binding on all the parties.

8 (8) All issues that are not resolved at the mediation shall be assigned to  
9 the Frankfort motion docket within ten (10) days of the mediation.

10 Section 4. (1) The executive director shall:

11 (a) evaluate the process of the mediation program three (3) months from  
12 the effective date of this emergency administrative regulation;

13 (b) evaluate the program every three (3) months from the first evaluation  
14 during the first year of the program; and

15 (c) evaluate the mediation program once a year thereafter.

16 (2) The executive director's evaluation shall determine if:

17 (a) the mediation program provides adequate assistance to all parties  
18 involved in medical disputes;

19 (b) the mediation program provides for a cost-effective and efficient way  
20 to handle medical disputes; and

21 (c) the mediation program should continue or be changed.

22 (3) The executive director shall review the following information for his  
23 evaluation:

24 (a) the number of medical disputes resolved through mediation;

- 1 (b) length of time to set, conduct, and conclude mediation;
- 2 (c) types of issues disputed;
- 3 (d) amount in dispute;
- 4 (e) programming and staff time for mediation program;
- 5 (f) costs of administration of mediation program; and
- 6 (g) the number of medical disputes on the Frankfort motion docket.

7 Section 5. Incorporation by Reference.

8 (1) The following material is incorporated by reference, Form MAO,  
9 Medical Fee Dispute and Mediation Agreed Order, (September, 2005.)

10 (2) This material may be inspected, copied, and obtained, subject to  
11 applicable copyright law, at the Office of Workers' Claims, Prevention Park 657  
12 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m.  
13 to 4:30 p.m.



William P. Emrick, Executive Director  
Office of Workers' Claims

9-30-05

Date

CONTACT PERSON:

Carla H. Montgomery, General Counsel  
Office of Worker's Claims  
Prevention Park  
657 Chamberlin Avenue  
Frankfort, Kentucky 40601  
Telephone Number: (502) 564-5550, Ext. 4464  
Fax Number: (502) 564-0681

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 803 KAR 25:250E

Contact person: Carla H. Montgomery

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: The regulation establishes a mediation program for post settlement and post award medical disputes.
  - (b) The necessity of this administrative regulation: The medical disputes filed with the Office of Workers' Claims have significantly and rapidly increased to an unmanageable level. Our agency needs to immediately find a way to reduce the Frankfort motion docket and give claimants and employers a way to resolve these matters informally without the necessity of costly litigation.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.276 enables the executive director to establish a program for mediation and promulgate administrative regulations to administer the program. KRS 342.735(1) requires administrative regulations to expedite the payment of medical benefits.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation establishes a mediation program which will assist in expediting medical fee disputes that are backlogged on Frankfort motion docket. Many can be resolved through mediation without the necessity of counsel and litigation. The number of medical disputes has risen so rapidly, it is difficult to quickly and expeditiously resolve these matters. Mediation will assist claimants, carriers, employers, and physicians to quickly resolve issues at minimal costs.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: N/A
  - (b) The necessity of the amendment to this administrative regulation: N/A
  - (c) How the amendment conforms to the content of the authorizing statutes: N/A
  - (d) How the amendment will assist in the effective administration of the statutes: N/A
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All claimants, employers, carriers and physicians involved in a post settlement or award medical dispute would have mediation.
- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Carriers, claimants, employers, and physicians involved in a post settlement or award medical dispute would be required to mediate prior to an order being issued by an administrative law judge. The mediation could quickly resolve a significant number of medical disputes lowering costs and reducing time to resolve disputes.



- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: Most mediation dockets will be set with administrative law judges when they are already traveling to hearing sites. There may be additional travel costs if an additional day is necessary to hold the mediations. But most of the agency's work to implement this regulation would be in our normal budgetary costs.
  - (b) On a continuing basis: same as initial cost.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The normal budget for the Office of Workers' Claims.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no need to increase fees or funding.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established.
- (9) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering is not applied, because the mediation would apply to everyone filing medical disputes on post settlement or post award claims.

803 KAR 25:250E

MEDIATION OF MEDICAL DISPUTES

SUMMARY OF INCORPORATED MATERIAL

FILED WITH LRC OCTOBER 5, 2005

**1. Form MAO, Medical Fee Dispute and Mediation Agreed Order  
(September 2005)**

This form is used by administrative law judges to identify the type of challenged procedure, the basis for the challenge, resolved issues, and disputed resolved issues in a mediation of a medical dispute

The form is two (2) pages.

COMMONWEALTH OF KENTUCKY  
OFFICE OF WORKERS CLAIMS  
CLAIM NO. \_\_\_\_\_

PLAINTIFF

VS.

DEFENDANT(S)

**MEDICAL FEE DISPUTE & MEDIATION**

**AGREED ORDER**

**I. MEDICAL FEE DISPUTE RESOLUTION**

A. Type of challenged or unpaid procedure

- \_\_\_\_\_ Prescription medication
- \_\_\_\_\_ Pain management
- \_\_\_\_\_ Medical office visits
- \_\_\_\_\_ Appliances or prostheses
- \_\_\_\_\_ Chiropractic treatment
- \_\_\_\_\_ Physical therapy
- \_\_\_\_\_ Surgery
- \_\_\_\_\_ Home Health /attendant care
- \_\_\_\_\_ Diagnostic testing
- \_\_\_\_\_ Mileage reimbursement for medical treatment
- \_\_\_\_\_ Other (specify): \_\_\_\_\_

B. Basis for Challenge

- \_\_\_\_\_ Reasonableness / necessity of procedure or charge
- \_\_\_\_\_ Utilization of medical services
- \_\_\_\_\_ Utilization of prescription medication
- \_\_\_\_\_ Causation / work-relatedness
- \_\_\_\_\_ Form 113 referral
- \_\_\_\_\_ Refusal to authorize or pay for medical services
- \_\_\_\_\_ Other (specify): \_\_\_\_\_

C. The following issues have been resolved as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

II. UNRESOLVED MEDICAL FEE DISPUTE ISSUES

The following issues remain unresolved and will be referred to the Frankfort Motion Docket for the entry of the appropriate order: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
ADMINISTRATIVE LAW JUDGE /  
MEDIATOR

Have seen and agreed:

\_\_\_\_\_  
Plaintiff's Attorney

\_\_\_\_\_

\_\_\_\_\_  
Defendant/Employer's Attorney

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_